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OFFICE OF PETITIONS

DECLARATION OF JEFFREY A. BATIO

I, Jeffrey A. Batio, declare under penalty of perjury under the laws of the United States that the following is true and correct to the best of my knowledge, information, and belief, as follows:

1. I am the named inventor of U.S. Patent Application Serial No. 09/690,799, filed October 17, 2000. At the time of filing, I was the Chief Executive Officer of Xentex.
2. Xentex hired the U.S. law firm of Hamman & Benn to prepare the above-identified application, and the application was filed by Milton Gerstein of Hamman & Benn on October 17, 2000.
3. On November 15, 2002, an office action issued rejecting the claims. Neither I nor any Xentex personnel were informed by our attorneys or any other person that an office action had issued, and were unaware of the due date for a response.
4. Sometime after November 15, 2002, to the best of my knowledge, the prosecuting law firm of Hamman & Benn merged with or was absorbed into the law firm of Much Shelist Freed Denenberg Ament & Rubenstein ("Much Shelist"), with the prosecuting attorney, Milton Gerstein, continuing to work at Much Shelist.
5. Sometime between November 2002 and February 2003, I met with Mr. Richard Superfine, an attorney for the Much Shelist firm, regarding an unrelated matter. While at the Much Shelist firm, I inquired as to the status of the subject patent application. I recall that none of the personnel at the Much Shelist firm could locate the patent file. I was not pleased that they were in such a state of disorganization.
6. On March 11, 2003, Xentex entered bankruptcy proceedings in the U.S. Bankruptcy Court.
7. On April 30, 2003, Philip Martino ("Martino") of the law firm of Piper & Richmond Pauly Marbury ("Piper") was appointed as the trustee for the debtor, Xentex. Neither Xentex personnel nor myself were ever informed by the trustee in bankruptcy or by Much Shelist of the response due date for the subject patent application.
8. On May 15, 2003, the six month statutory period for responding to the office action expired, and the application lapsed. I was not informed of the lapse.
9. In summary, prior to the time Xentex entered bankruptcy, neither I nor Xentex personnel were informed of the upcoming office action response due date. Even after the trustee was appointed, I was not aware of the office action response due date. Due to the error of not being properly advised that the office action response was due, the application inadvertently lapsed, and such lapse did not occur through any intentional decision on my part or on the part of any Xentex personnel.

This 19th day of August, 2005.


Jeffrey A. Bano